

REMARKS

The last Office Action has been carefully considered.

Claims 1-8 and 10-12 are rejected under 35 USC 103(a) over the U.S. patent to Walker, et al in view of the U.S. patent to Takeno et al.

After carefully considering the Examiner's grounds for rejection of the claims over the art, applicants cancelled Claims 6 and 10 and amended Claims 5, 11 and 12 so as to more clearly define the present invention and to distinguish it from the prior art.

Claim 5 as amended more clearly defined that there is a housing with only one compartment, and a plurality of battery cells are located in said one compartment. This claim also defines that the at least one duct is located in a nip between individual ones of the battery cells and the at least one duct has wall regions that press in form-locking fashion against the battery cells that are located adjacent to the wall regions.

Claims 11 and 12 have been amended correspondingly so as to define similar features.

In the Office Action the Examiner rejected Claim 10 as being unpatentable over the U.S. patent to Walker et al in view of the U.S. patent to Takeno et al. Applicants have to respectfully disagree with this position for the following reasons. The Examiner's assertion that Figure 2 of the Walker et al patent discloses at least one duct (86, 88) with wall regions that rest in form-locking fashion against the battery cell compartments (20, 30, ...) is incorrect. The wall regions of the ducts do not rest in the form-locking fashion against the battery cell compartments. As can be seen from Figure 2, the battery cell compartments (20, 30, ...) have a circular shape. The ducts (86, 88) have a rectangular shape. Therefore, the ducts cannot rest in form-locking fashion against the battery cell compartments. It is emphasized that the term "form-locking" actually means that the shapes of element correspond to one another to fit with one another in an inter-fitting manner.

An important difference between the device disclosed in the Walker et al patent and the device in accordance with the present invention is that according to the present invention the housing (1) forms only one compartment which contains all battery cells. This can be seen from Figure 1. The individual cells are not located in separate compartments as disclosed in the patent to Walker et al. According to the Walker et al patent, each battery cell has its own compartment within the main body (10).

Another important difference between the device disclosed in the patent to Walker et al and the device of the present invention is that in the device according to the present invention the at least one duct has wall regions that rest in form-locking fashion against the battery cells that are located adjacent to the wall regions. In the patent to Walker et al the ducts (86, 88) are of a rectangular shape, whereas the battery cells are cylindrical. Thus, the wall regions of the ducts (86, 88) cannot rest in form-locking fashion against the battery cell compartments.

It is believed to be clear that the above discussed references do not disclose the new features of the present invention as now defined in Claims 5, 11 and 12.

As for the combination of these references proposed by the Examiner, a person skilled in the art who combined the teaching of the references for some unknown and highly improbable reasons would arrive at the housing with several individual compartments, each containing one single battery cell and with ducts in the nip between the cell compartments and not between the battery cells themselves. It is therefore believed to be clear that the combination of the patents to Walker et al and to Takeno et al would not render obvious the present invention as defined in Claims 5, 11 and 12.

In order to arrive at the applicant's invention from the teaching of the references taken singly or in combination with one another, the references have to be fundamentally modified, and in particular by redesigning the devices disclosed in the references so that they would include the new features of the present invention as now defined in Claims 5, 11 and 12. However, it is known that in order to arrive at a claimed invention, by modifying the references the cited art must itself contain a suggestion for such a modification.

This principle has been consistently upheld by the U.S. Court of Customs and Patent Appeals which, for example, held in its decision *In Re Randol and Redford* (165 USPQ 586) that:

Prior patents are references only for what they clearly disclose or suggest, it is not a proper use of a patent as a reference to modify its structure to one which prior art references do not suggest.

In view of the above presented remarks and amendments it is believed that Claims 5, 11 and 12 should be considered as patentably distinguishing over the art and should be allowed.

As for the dependent claims, these claims depend on Claim 5, they share its allowable features, and they should be allowed as well.

Reconsideration and allowance of the present application is most respectfully requested.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place this case in condition for final allowance, then it is respectfully requested that such amendments or corrections be carried out by Examiner's Amendment, and the case be passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance; he is invited to telephone the undersigned (at 631-549-4700).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Michael J. Striker', with a long horizontal flourish extending to the right.

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